IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10335 of 1999

HONOURABLE MR.JUSTICE KS JHAVERI

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STATE OF GUJARAT - Petitioner(s)
Versus
CHAUHAN MEHBUB OSMAN - Respondent(s)

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Appearance :
Ms Hansaben Punani, AGP, for Petitioner No(s).: 1.
MR SANDEEP N BHATT for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 17/08/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 27.1.1999 passed by the Labour Court, Junagadh, in Reference (LCJ) No.174/94 whereby the Labour Court directed the petitioner to reinstate the respondent on his original post along with full back wages.

2. The short facts of the case are that the respondent was working with the petitioner as Helper and his services were terminated without following proper procedure. The respondent raised a dispute which was referred to the Labour Court, Junagadh which passed the

aforesaid award.

3. While admitting this matter this Court has passed the following order:

> "Heard learned AGP Mr. HH Patel for the petitioner and Ld Advocate Mr. Bhatt for the Respondent workman. Rule. I.R. In terms of para 9(b) subject to compliance of section 17B of the I.D. Act. Petitioner is directed to pay full wages last drawn by Resp. workman w.e.f. 27.1.99 and shall continue to pay the same regularly every month during the pendency and final disposal of this petition Respondent is directed to file affidavit as required u/s 17B of the ID Act within three weeks from today. After filing of such affidavit the petitioner shall pay full wages last drawn w.e.f. 27.1.99 till the final disposal of this petition."
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> Mrs. Hansaben Punani, learned AGP for the petitioner submitted that in spite of the fact that specific contention was raised in the in the reply that the appointment in question is under the Apprentice Act, 1961 and the respondent is not a workman and is not entitled for any of the benefits under the ID Act, the Labour Court passed the impugned award which requires to be quashed and set aside. Mrs. Punani has relied upon a decision of the Supreme Court in the case of **U.P. State Electricity Board Vs. Shiv Mohan Singh and Another, reported in (2004)8 SCC 402** wherein it is held that it is impermissible in law for a party to the apprenticeship contract to allow it to be worked out and then contend that it was a contract of employment. She further submitted that even assuming that the appointment was for a particular period, then also the Labour Court has committed an error in granting reinstatement with backwages.

4. Learned counsel for the respondent submitted that the Labour Court has considered all the facts and circumstances of the case and has not committed any error in granting reinstatement.

5. As a result of the hearing and perusal of the record it is clear that a specific contention was raised before the Labour Court that the appointment is under the Apprentice Act, 1961, the respondent is not entitled for any of the benefits under the I.D. Act and as soon as the contract period was over, in view of the clause 4 of the contract, the respondent was relieved. In that view of the matter the respondent is not a workman and Labour Court has no jurisdiction to entertain the dispute between the petitioner and the respondent. Thus, since the respondent was appointed under the Apprentice Act, he is not a workman defined under the I.D. Act. This view is supported by the decision of the Apex Court in the case of U.P. State Electricity Board (supra).

6. In the premises aforesaid, the impugned award is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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